

Document No. 432
August 2, 1959

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

COMITÉ MARITIME INTERNATIONAL

LIABILITY OF OPERATORS OF NUCLEAR SHIPS

PROVISIONAL REPORT OF THE RESTRICTED
SUB-COMMITTEE

A. There are three Conventions at present under discussion dealing with nuclear liabilities:

1. A Convention which the Organization for European Economic Cooperation (O.E.E.C.) is preparing for application to O.E.E.C. Countries.

2. A Convention which the International Atomic Energy Agency of the United Nations has under consideration, intended ultimately to be of world-wide application.

3. A Convention under preparation by Euratom which is intended to be complementary to the O.E.E.C. Convention and to apply only to Euratom Countries.

In addition to these Conventions legislation is now before the Parliament of the United Kingdom, which deals with the liabilities of the operators of land reactors in that Country, and the United States has provided an indemnity for the N.S. "SAVANNAH" which is of world-wide application.

Hitherto none of the Conventions or legislation deal with the question of the liability of operators of nuclear ships.

It is known that a number of nuclear ships, at present all Government-owned, are already in service and it is apparent that the time is not far off when a larger number of nuclear ships will be constructed and operated for commercial purposes. It is to be expected that such vessels will ultimately be operated by private interests. It is, therefore, the view of the Comité Maritime International that it is a matter of urgency that the liability of those who operate floating reactors should be most carefully considered and that at an early date a draft international Convention, intended ultimately to be of world-wide application, be produced.

B. It is obvious that such a Convention is one which will deal primarily with a matter of supreme public interest and must, therefore, ultimately be acceptable to all Governments concerned.

In preparing this draft, therefore, we have put to the forefront of our consideration the following vital factors:

1. Protection of the public.
 2. The feasibility of the operation of nuclear ships by private interests on a commercial basis.
 3. Protection of conventional ships.
 4. The vital necessity of unifying the law upon this topic throughout the world.
-

C. In our draft Convention we have made no affirmative provision with regard to Governmental licensing, because this is a matter, in our opinion, essentially for the Governments concerned. Nevertheless we must assume that no nuclear ship will be allowed to operate except under stringent license by the appropriate Government Authority. The conditions under which such licenses will be granted will, we profoundly hope, be internationally agreed. Primarily we assume that such conditions will be directed towards the maintenance of very high standards of health and safety in the design, construction

and operation of the reactor. Because we consider the point of vital importance, we have therefore assumed that no such license will be granted unless the licensing Authority has satisfied itself that the financial security required under the Convention shall be at all times available for the compensation of any victims of a nuclear incident without any restriction whatsoever, and we have further assumed that the licensing Authority will be a Governmental Authority and have found it necessary to state in the Convention that the "licensing State" is that "which has licensed, registered, or otherwise given authority for the operation of the nuclear vessel."

D. In framing this Convention we are conscious that it does in some respects conflict with a number of previous international maritime Conventions, some of many years standing; it is our intention that where such conflict arises this Convention shall always prevail. We appreciate that it will ultimately be necessary for a number of prior maritime Conventions to be amended by the Diplomatic Conference in Brussels.

E. We conceive that the fundamental principles upon which the Convention should be based and upon which we have in fact based it, are as follows:

1. The operator of a nuclear ship should be absolutely liable, without regard to fault on his part or on the part of those for whom he may be vicariously responsible, for nuclear damage caused by a nuclear incident as defined in the Convention. In following this principle which we find to be that upon which the above mentioned Conventions and legislation are all based, we have attempted to give it the widest possible application and we have only allowed one exception, namely, that of "war, hostilities, civil war or insurrection."

2. This absolute liability is also to be exclusive. No person other than the operator of the nuclear ship should be liable for nuclear damage, even if that damage was caused by the negligence of the person suffering damage, or by the negligence of those for whom he is responsible.

3. This absolute and exclusive liability must, however, be subject to some limit in amount and in time.

4. Whatever limit in amount be ultimately decided upon it is essential that the operator of the nuclear ship be compelled to effect and maintain insurance (or other financial security) to compensate those suffering damage by reason of a nuclear incident in the maximum amount obtainable upon the commercial market.

We appreciate that these principles conflict with traditional concepts of law, but we find that this is an entirely new problem and that the paramount consideration, which is that, in the event of a nuclear casualty, the victims shall receive proper compensation, requires that the sole and exclusive liability falls upon one person; that person must be readily accessible for the purpose of compensation and must be covered by adequate financial security. If one introduces into this scheme ideas of contribution or liability dependent upon negligence, it is our opinion that this paramount object will not be achieved.

F. In parenthesis we would observe that it is indeed likely that the operator of a nuclear ship which causes nuclear damage would in many jurisdictions be held liable merely by reason of the fact that he was responsible for operating a nuclear vessel.

G. We have found the question of the limitation amount the most difficult problem with which we have to deal.

Unlikely as it may be that a nuclear incident will occur, if proper safety regulations are devised and observed, it must be recognized that if such an incident were to occur, the consequent damage might be greatly in excess of any sum coverable by the operator's commercial insurance. For this reason we conceive that it is essential that licensing States should supplement the sum available from the operator's commercial insurance up to an amount stipulated in the Convention.

Many maritime Nations have already adopted the policy of promoting the peaceful use of nuclear energy through its applica-

tion to the propulsion of ships, and we expect that many more maritime Nations will adopt this policy in the future. In order adequately to compensate the victims of a nuclear incident for the damage to persons and property which they may suffer, we consider that it is right that Governments adopting this policy should supplement the operator's commercial insurance up to a stipulated amount. This amount can only, in our view, be determined between Governments at the Diplomatic Conference, but it is obvious that the amount must be sufficient to assure the public that victims of a nuclear incident will be adequately compensated.

Quite apart from the encouragement of this new technology, all maritime Nations will derive benefit from this system, whether or not they themselves may plan to promote nuclear ships, through the protection that will be afforded to their citizens against injury and damage which may be caused by foreign flag nuclear ships in their territorial waters.

We have left blank in our Convention the figure at which the shipowner's portion of the nuclear liability fund should be fixed, but it should, in our opinion, equal the maximum coverage obtainable by him using all the resources of the international insurance market. This amount cannot at the time of this Report be stated with accuracy, but we expect that sufficient information will be available before the Rijeka Conference to enable the adoption of a realistic figure at that Conference.

We have had considerable discussion as to the means whereby Governments could make their financial contribution in consonance with existing legal procedure. In our opinion the most feasible method will be an express provision in the Convention that the licensing State shall add to the operator's portion of the nuclear limitation fund such sum as may be necessary to satisfy all claims up to the limit which will ultimately be fixed between Governments.

H. A world-wide Convention of the type which we propose is particularly necessary for the protection of operators of non-nuclear vessels. The operation of nuclear ships will subject non-nuclear ships to the risk of causing a nuclear incident by collision with a

nuclear ship. This Convention will relieve the non-nuclear ship operator of all nuclear liability.

I. As regards the limitation in time, we see no reason to depart from the period of ten years which is stipulated in all the above Conventions.

J. In this report we have purposely confined ourselves to what we conceive to be the basic principles of a Convention regulating the liability of operators of nuclear ships. We appreciate that there are matters of detail, of varying importance, with which we have not dealt. We consider, however, that these will be appropriate for discussion at the Rijeka Conference and should not burden this report.

K. In conclusion we express the earnest hope that a definite conclusion will emerge from the Rijeka Conference; it is with this object that we have endeavoured to clarify the issues for the assistance of the national Associations.

Antwerp, July 11/12, 1959.